

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6275 of 1986

with

SPECIAL CIVIL APPLICATION No 85 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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G BALKRISHNA

Versus

ENGINEERS INDIA LTD

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Appearance:

1. Special Civil Application No. 6275 of 1986  
MR SHALIN MEHTA for Petitioner  
MR KD GANDHI for Respondent No. 1, 2, 3, 4
2. Special Civil Application No. 85 of 1990  
MR SHALIN MEHTA for Petitioner  
MR KD GANDHI for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/02/98

ORAL JUDGEMENT

1. As both these special civil application have been filed by one and the same petitioner in his service matter against the respondent-company, the same are being taken up for hearing together and are being disposed of by this common order.

SPECIAL CIVIL APPLICATION No 6275 of 1986

2. The facts of the case, in brief, are that the petitioner was engaged by the respondent-company, as per his case, as Typist cum Telex/Teleprinter Operator at its office at Baroda on 5th December, 1980 on daily wages. The petitioner in this petition has prayed for direction to the respondents to absorb the petitioner and regularise in the service as Typist cum Telex/Teleprinter Operator. Further prayer has been made for grant of all the consequential benefits and also grant him equal pay. Next prayer has been made for declaration that the petitioner may be treated to be regularly appointed from 5th December, 1980 and direction be given to the respondents to grant him difference of salary and allowances etc. from 5th December, 1980. By way of amendment, it has been stated that on 24th December, 1986, he was told by the company that he would be relieved on 31st December, 1986, and as such, prayer has been made for maintaining of the status-quo.

SPECIAL CIVIL APPLICATION No 85 of 1990

3. In this special civil application, prayer has been made by the petitioner for quashing and setting aside the order dated 27th December, 1989 of the disciplinary authority under which he was dismissed from services of the company. This dismissal has been ordered on the proof of misconduct of defrauding the company to the tune of Rs.12471-60 ps. in a domestic inquiry. The petitioner has made further prayer for consequential reliefs in this special civil application. The petitioner also prayed for grant of interim relief in the terms :

- (i) staying implementation and enforcement of the order dated 27-12-1989, annexure 'F';
- (ii) directing the respondents-authorities to allow the petitioner to discharge his duties as Typist cum Telex/Teleprinter Operator at Baroda office without any interference and pay the petitioner his salary regularly.

4. This special civil application has come up for admission on 11-1-1990 on which date notice was issued to the respondents. This matter came up for hearing next before this Court on 19th June, 1991. The order of this Court of the aforesaid date reads as under:

In this case it is a fact that the Inquiry Officer's report was separate and no inquiry report was given to the petitioner before the Disciplinary Authority to pass the order. In the judgment of the Supreme Court reported in AIR 1988 SC 1000, and also in the latest judgment of the Supreme Court in the case of Union of India and others vs. Mohammed Ramzan Khan, reported in AIR 1991 SC 471, it is held that the Inquiry Officer according to the findings of guilt and proposing a punishment is bound to give the copy of the report to the delinquent and if the delinquent is deprived of the knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching the conclusion, rules of natural justice would be affected.

Hence Rule. Mr. Mehta waives service of Rule. Interim relief in terms of Para 11 (b). In view of the interim relief, Rule is made returnable on 9th September, 1991.

Direct service permitted.  
This Court has granted interim relief in terms of para 11(b) of the special civil application.

5. I shall first take up the special civil application No.85 of 1990 for decision.

6. Only contention has been raised by the learned counsel for the petitioner in this case that the order of dismissal of the petitioner from services vitiate on the ground that the inquiry report was not given to the petitioner.

7. From the order of this Court dated 19th June, 1991, it is clear that only on this ground, the petition has been admitted.

8. The Apex Court in the case of Managing Director, E.C.I.L., Hyderabad vs. B. Karunakaran reported in JT 1993 (6) SC 1 reconsidered its earlier decision given in the case of Union of India vs. Mohammed Ramzan Khan reported in AIR 1991 SC 471, and laid down the law that

the decision in the case of Union of India vs. Mohammed Ramzan Khan (supra) shall have a prospective effect i.e. the matter which has been decided earlier to the decision of the Apex Court in the case of Union of India vs. Mohammed Ramzan Khan (supra) shall not be reopened on the ground of non-supply of the inquiry report to the delinquent employee/officer. The Apex Court's decision in the case of Union of India vs. Mohammed Ramzan Khan was given on 20th November, 1990 and in the present case, the order of dismissal of the petitioner from services has been made on 27th December, 1989 i.e. earlier to the date of the decision of the Apex Court in the aforesaid case. So the order of dismissal of the petitioner from services does not vitiate on the ground of non-supply of the inquiry report to the petitioner.

9. The learned counsel for the petitioner has not raised any other points in this case.

10. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated.

11. In this case, by way of interim relief, the petitioner has been ordered to be paid the salary at the rate of Rs.700/- p.m. and from 19th June, 1991, till date the petitioner is receiving that amount. The petitioner has been given that benefit by way of interim relief and that benefit could have been retained by him in case ultimately, he would have succeeded in the special civil application. In the special civil application, the petitioner has not succeeded, and as such, whatever benefit which he received under the interim order of this Court dated 19th June, 1991 are repayable by him to the respondent-company. The petitioner is directed to repay all the monetary benefits which have been received by him from the respondent-company in pursuance of the order of this Court dated 19th June, 1991, within a period of six months from the date of the receipt of writ of this order. In case that amount is not paid by the petitioner within the period as aforesaid, it shall be open to the respondent to recover that amount from the petitioner.

12. Now I may take up the other special civil application.

13. The learned counsel for the petitioner relying on the decision of the Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, C.P.W.D. reported in 1986 (1) SCC 639 contended that on the doctrine of

`equal pay for equal work', the petitioner is entitled for difference of salary as given to him on daily wages and the pay scale of the post of Typist cum Telex/Teleprinter Operator.

14. On the other hand, the learned counsel for the respondents contended that it is not correct to say on the part of the petitioner that he was appointed on the post of Typist cum Telex/Teleprinter Operator. The petitioner was engaged on daily wages to do work as assigned. Merely because some time the work has been taken from him of Typist cum Telex/Teleprinter Operator, it cannot be accepted that he was given the appointment as such. The learned counsel for the respondents further contended that the petitioner was taken as a daily rated worker on contingency basis. There is no regular post available even on contingency basis. He was assigned the general office work such as filing work, purchase of stationery and similar petty items, visiting bank, post office for petty work, and running errands outside the office requiring the services of a messenger etc..

15. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

16. The learned counsel for the petitioner, on being asked by the Court, was unable to show the order of the appointment of the petitioner as Typist cum Telex/Teleprinter Operator. On the basis of the certificate issued to him, the learned counsel for the petitioner contended that the petitioner should have been taken to be working as Typist cum Telex/Teleprinter Operator. Annexure 'A' on the record of this special civil application, which is the certificate issued on 18th February, 1985 wherein it has only been certified that the petitioner is working in the office with effect from 5th December, 1980. It has not been mentioned in that certificate that the petitioner was working as Typist cum Telex/Teleprinter Operator. Then the petitioner has made reference to certain correspondences and vouchers of payment, but in the presence of the pleadings of the respondents where the status of the petitioner has been denied of the Typist cum Telex/Teleprinter Operator, it is a serious disputed question of fact on which this Court cannot hold an inquiry. Be that as it may. The petitioner has been engaged as daily rated employee and he has been paid from contingency account. He continued to be daily wage employee for all the time and ultimately his services were terminated.

17. The petitioner has claimed the benefit of equal pay for equal work but that claim cannot be accepted. There can't be any parity of employment in between daily wagger and regularly appointed employee in pay scale. These are two different classes and the claim of daily wagger of pay equal to the pay of regularly appointed employee in pay scale does not stand to any merits. In the case of State of U.P. & Ors. vs. Ajay Kumar reported in 1997 (4) SCC 88 the Apex Court has not accepted the claim of the daily wagers of their regularisation. The Apex Court held:

3. The admitted position is that the respondent came to be appointed on daily wage basis on 14-2-1985 as Class IV employee, Nursing Orderly, in the Medical College by the Medical Superintendent. When the respondent filed a writ petition in the High Court for his regularisation, the learned Single Judge pointed out that the respondent has not brought to the notice of the Court, any statutory rule under which the respondent could be regularised, on the basis of the service rendered by him as a daily wage earner. Even the method of recruitment adopted by the Superintendent was not proper inasmuch as he did not call for applications. The Division Bench reversed the decision of the learned Single Judge and had given directions. It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then. The direction in the backdrop of the above facts is, obviously, illegal.

18. In view of this later decision of the Apex Court, the decision on which reliance has been placed by the learned counsel for the petitioner is of little help to him.

19. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands

vacated.

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